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No. 87-382

Supreme Court, U.S.
FILED
JUN 7 1988
JOSEPH F. SPANIOL, JR.
CLERK

In the Supreme Court of the United States

OCTOBER TERM, 1987

STATE TAX COMMISSION OF THE STATE OF NEW YORK, ET AL., PETITIONERS

v.

HERZOG BROTHERS TRUCKING, INC., ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE STATE OF NEW YORK

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE

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QUESTION PRESENTED

The State of New York imposes excise and sales taxes on the sale of motor fuel. The economic burden and legal incidence of the taxes are borne by the ultimate consumer, but the wholesale distributor of the motor fuel is required to prepay the taxes upon the importation or first sale of the fuel in the State. The question presented is:

Whether the State of New York may require a non-Indian wholesale distributor of motor fuel to prepay excise and sales taxes on the importation of motor fuel into the State where the fuel is to be sold to Indian retailers on an Indian reservation for ultimate sale to both Indian and non-Indian consumers.

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INTEREST OF THE UNITED STATES

This brief is filed in response to the Court's invitation to the Solicitor General to file a brief expressing the views of the United States.

STATEMENT

1. Respondent Herzog Brothers Trucking, Inc. (Herzog), is a Pennsylvania corporation engaged in the wholesale and retail sale of motor fuel.[1] In 1984, Herzog began engaging in the wholesale distribution of motor fuel to Indian-owned retail establishments on the Allegany and Cattaraugus Indian Reservations of the Seneca Nation in New York. Those sales constituted Herzog's only motor fuel transactions in the State. Pet. App. A4.

[1] The respondents before this Court also include the principals of Herzog Brothers Trucking.

New York imposes a special excise tax and its generally applicable sales tax on the sale of motor fuel that is imported into and sold within the State, except when collection of such taxes is precluded by the Constitution or laws of the United States. N.Y. Tax Law §§ 284(1), 284-a, 284-c, 1101(b)(4)(ii), 1102(a), 1105, 1116(a)(6) (McKinney 1986, 1987 & Supp. 1988). The burden and legal incidence of the motor fuel and sales taxes fall on the ultimate consumer. However, a distributor must prepay the excise and sales taxes upon the importation or first sale of the fuel within the State. The distributor then passes the taxes on to the retailer, who in turn passes them on to the ultimate consumer. Pet. App. A8, A11, A16; N.Y. Tax Law §§ 284(1), 285-a(3), 289-c(1), (2), 1102(a), 1132(a), 1133 (McKinney 1986, 1987 & Supp. 1988).[2] Refunds may be obtained for any tax that is collected from or paid by a person or entity that is exempt from taxation (*id.* §§ 289-c, 1139 (1986 & 1987)). In accordance with this general policy, where the ultimate consumer of motor fuel is a tribal member who purchases the fuel on an Indian reservation, any taxes that have been prepaid by the distributor are subject to refund by the State. Pet. 3; Pet. App. A4-A5.[3]

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[2] Prior to 1985, the distributor was required to prepay only the excise tax; the generally applicable sales tax was collected at the time the fuel or other goods subject to the tax were sold to the ultimate consumer. Effective June 1, 1985, the sales tax was made subject to prepayment insofar as it applies to motor fuel. Pet. App. A4; 1985 N.Y. Laws 161, adding N.Y. Tax Law § 1102 (McKinney 1987). This prepayment requirement was adopted in response to tax evasion by non-Indians who went to the Reservations to purchase motor fuel from Indian retailers who believed that their operations were exempt from state taxation and therefore refused to collect the sales (or excise) tax on their retail sales. Pet. App. A16.

[3] The description in the text addresses the statutory and regulatory framework as it now exists. As we shall explain (see pages 15-16, *infra*), the State has proposed regulations that would exempt from the pre-

Respondents did not pay either the excise tax or the sales tax on the motor fuel that Herzog imported and sold to retailers on the Seneca reservations.[4] In October 1984, petitioners began to assess motor fuel and sales taxes against respondents with regard to past sales to reservation retailers. Respondents filed petitions challenging those assessments, contending that because all of Herzog's sales were to Indian retailers, they were exempt from the taxation and collection requirements. Pet. App. A5, A17.

2.a. On November 27, 1985, while administrative proceedings challenging the assessments were still pending, respondents commenced this action for declaratory and injunctive relief in the New York Supreme Court for Albany County. On December 6, 1985, the Supreme Court issued a preliminary injunction barring petitioners from determining or collecting any motor fuel or sales taxes allegedly owed by respondents with respect to fuel sold to Seneca Indians on the Seneca reservations (Pet. App. A23-A26). The court concluded that "[w]hile [petitioners] may constitutionally require the Seneca Indian vendors to assist them in collection of taxes imposed upon non-Indian purchasers (*Washington* [v.] *Confederated Tribes of* [*the*] *Colville* [*Indian Reservation*], 447 U.S. 134 [(1980)]), it may not require prepayment of the motor fuel and sales taxes by such vendors for all wholesale purchases from [respondents]. '[T]he first taxable event is the use, consumption or possession by the non-Indian purchaser.' " Pet. App. A25 (quoting *Colville*, 447 U.S. at 142 n.9).

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payment requirement that portion of a delivery of motor fuel that will be sold to Indian consumers on an Indian reservation.

[4] Respondents' refusal to prepay the taxes to the State apparently stemmed from the refusal by the reservation retailers to pay the amount of the taxes to Herzog when they made wholesale purchases of motor fuel, based on their belief that their retail operations were entirely exempt from state taxation. Pet. App. A4.

b. The Appellate Division reversed the order granting a preliminary injunction (Pet. App. A15-A22). The court noted that under this Court's decisions, a State may impose non-discriminatory taxes on non-Indian customers of Indian retailers who do business on an Indian reservation "and may further impose the 'minimal burden' of collecting the taxes from a non-Indian consumer on an Indian tribe or retailer as long as the legal incidence of the taxes falls on non-Indian purchasers" (*id.* at A18, citing *Moe* v. *Confederated Salish & Kootenai Tribes*, 425 U.S. 463, 483 (1976)). In the court's view, the "critical question" in this case is whether "the burden of total prepayment initially imposed on Herzog as the distributor, which is subject ultimately to a refund or credit if the sales have been made to exempt entities or persons, imposes a burden on [respondents] that exceeds the permissible 'minimal burden of collection' standard" (Pet. App. A18). The court concluded that respondents' application for a preliminary injunction did "not demonstrate any such excess" and that respondents therefore had failed to establish the "clear likelihood of success on the merits required for a showing of their entitlement to a preliminary injunction" (*ibid.*).

Two justices of the Appellate Division dissented (Pet. App. A19-A22). In their view, the burden imposed on the Indian retailers of prepaying the entire amount of the taxes, and only later obtaining a refund of taxes assessed on tax-exempt retail sales to Indians, was "more than the minimal burden approved by the Supreme Court," because "the Indian retailer is being deprived of his money for a period of time until he can prove it should be returned to him under this scheme" (*id.* at A20-A21). The dissenting justices continued (*id.* at A21):

> The tax on sales to Indians is preempted and thus prohibited. The taxing scheme therefore effectively requires

> [respondents] to prepay a prohibited tax. This requirement on [respondents] is also destructive of the trade relationship between Indians and their suppliers and is thus an unauthorized interference in Indian trading, an area preempted by Federal law (*see, Central Mach. Co.* [v.] *Arizona State Tax Commn.* [448 U.S. 160 (1980)]).

c. The New York Court of Appeals unanimously reversed the Appellate Division's order setting aside the preliminary injunction, holding that the prepayment requirement under the state excise and sales tax statutes is preempted by the federal Indian trader statutes, 25 U.S.C. 261-264 (Pet. App. A3-A14). The Court of Appeals acknowledged that the burden and legal incidence of the taxes rest with the ultimate consumer; that the State therefore may validly impose taxes on retail sales to non-Indian consumers; and that the State may require an Indian tribe or retailer to collect the tax on its sales to non-Indians and pay the proceeds over to the State (*id.* at A10-A11). But the court reasoned that even where a tax is imposed upon or otherwise burdens a transaction between a non-Indian customer and an Indian individual and the legal incidence of the tax falls on the non-Indian party to the transaction, it is still necessary to examine the relevant federal treaties and statutes and the policies underlying them in order to determine whether the method of collecting the state tax is constitutional. In this case, the court determined that the collection scheme impermissibly "imposes obligations on a wholesale trader to Indian retailers on Indian reservations" (*id.* at A11).

The Court of Appeals regarded the Indian trader statutes as intended to foster tribal self-government and economic development. In the court's view, those policies are not implicated in sales *by* reservation Indians to non-Indians, and such sales therefore may be subject to state sales and excise

taxes (Pet. App. A12, citing *Colville,* 447 U.S. at 155-156). By contrast, the court reasoned, those policies are implicated in on-reservation sales *to* Indians, and the Indian trader statutes therefore impose a comprehensive regime of regulation on such sales that leaves " 'no room' " for " 'additional burdens' " imposed by the state taxes (Pet. App. A13, quoting *Warren Trading Post Co.* v. *Arizona Tax Comm'n,* 380 U.S. 685, 690 (1965) (footnote omitted)). Accordingly, because respondent Herzog is an Indian trader by virtue of its sales of motor fuel to Indian retailers on the Seneca reservations, the court believed that "no matter how minimal the burden imposed by the motor fuel taxation scheme on Herzog, * * * such regulation is preempted by the federal trader laws" (Pet. App. A14). On this basis, the Court of Appeals held that respondents had shown a clear likelihood of success on the merits, and therefore were entitled to reinstatement of the preliminary injunction (*ibid.*).

DISCUSSION

The Court of Appeals gave an unduly broad preemptive effect to the Indian trader statutes insofar as it held that New York State may not require respondents to prepay the excise and sales taxes on motor fuel sold to Indian retailers for subsequent sale to non-Indian customers. In the current posture of this case, it must be assumed that under *Moe* v. *Confederated Salish & Kootenai Tribes,* 425 U.S. 463 (1976), and *Washington* v. *Confederated Tribes of the Colville Indian Reservation,* 447 U.S. 134 (1980), the State may impose the excise and sales taxes on reservation sales of motor fuel by Indian retailers to non-Indians and may require the Indian retailers to collect the taxes and remit them to the State. The requirement that the wholesale distributor prepay those taxes and pass their burden on to the Indian retailer, who will in turn collect the taxes from the non-

Indian customer, is, in our view, a reasonable incremental burden on the Indian retailer and his non-Indian supplier.

On the other hand, because petitioners concede that retail sales to Indians are not subject to state taxation, we believe that the prepayment requirement imposes an impermissible burden on the distribution of motor fuel to Indian traders for such sales, at least where it is reasonably practicable for the State to provide for an exemption from the prepayment requirement for the estimated portion of the fuel that will be sold to Indians. Such an exemption is reasonably practicable here. Indeed, since the petition for a writ of certiorari was filed, the New York State Department of Finance and Taxation has proposed regulations that would exempt from the prepayment requirement the estimated portion of a wholesale sale of motor fuel that will be sold to Indians. We accordingly suggest that the Court grant the petition for a writ of certiorari, vacate the judgment of the Court of Appeals, and remand the case to that court for further consideration in light of the State's new position and the views expressed herein.

1. As this case comes to the Court, it presents a narrow question concerning only the *pre*payment of certain state taxes, not the validity of the taxes themselves. Respondents do not challenge the validity of the state excise and sales taxes as applied to on-reservation retail sales by Indian businesses to non-Indian consumers; they argue only that the State should be required to collect those taxes directly from the Indian retailers, not indirectly through prepayment by respondent Herzog, the wholesale distributor. See Br. in Opp. 6, 11, 13-14.[5] The New York

[5] The Indian retailers have taken the position that even their sales to non-Indians are exempt from state taxation (Pet. 3; Pet. App. A16). Presumably, the retailers (or their customers) would be free to contest the validity of the taxes by seeking a refund pursuant to available procedures under state law (N.Y. Tax Law §§ 289-c, 1139 (McKinney 1986 & 1987); Pet. App. A5), and the Seneca Nation could challenge the taxes

Court of Appeals similarly proceeded on the assumption that the excise and sales taxes are valid as applied to sales by Indian retailers to non-Indians. Pet. App. A10-A12.[6]

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in a suit brought in federal court pursuant to 28 U.S.C. 1341 (see *Moe*, 425 U.S. at 470-475).

[6] In *Moe* and *Colville*, the Court sustained the application of state taxes to the on-reservation sale of cigarettes by tribal and other Indian retailers to non-Indians. In those cases, the value marketed by the smokeshops to non-Indians coming from outside the reservation was not generated on the reservation by activities in which the tribes had a significant interest; rather the smokeshops were essentially " 'market[ing] an exemption from state taxation to persons who would normally do their business elsewhere.' " *California* v. *Cabazon Band of Mission Indians*, No. 85-1708 (Feb. 25, 1987), slip op. 15-16 (quoting *Colville*, 447 U.S. at 155). See also *Cabazon*, slip op. 16 (unlike in *Colville* and *Moe*, the tribes operating bingo facilities "are not merely importing a product onto the reservations for immediate resale to non-Indians"). See also *California State Bd. of Equalization* v. *Chemehuevi Indian Tribe*, 474 U.S. 9 (1985).

The retail establishments in this case may in some respects be similar to the smokeshops in *Moe* and *Colville*: the Appellate Division noted that when the Indian retailers refused to pay the motor fuel tax, "non-Indians were driving to the reservations and purchasing motor fuels and avoiding the payment of taxes" (Pet. App. A16). Moreover, in determining the validity of state taxes specifically with respect to the sale of motor fuel to non-Indians, it would be necessary to consider the application of the Hayden-Cartwright Act, 4 U.S.C. 104. That Act provides that "[a]ll taxes levied by any State * * * upon, with respect to, or measured by, sales * * * of gasoline or other motor vehicle fuels may be levied, in the same manner and to the same extent, with respect to such fuels" when sold by or through establishments "on United States military or other reservations" (4 U.S.C. 104(a)). The question whether the Hayden-Cartwright Act applies to Indian reservations at all was left open in *White Mountain Apache Tribe* v. *Bracker*, 448 U.S. 136 (1980), in which the Court held that the Act was not in any event "designed to overcome the otherwise pre-emptive effect of federal regulation of tribal timber" on a reservation (448 U.S. at 152 n.16). See *Application of Federal and State Taxes to Activities of Menominee Indian Mills*, 57 Interior Dec. 129, 138-139 (1940) (concluding that the

By the same token, petitioners do not question the proposition that sales of motor fuel by on-reservation Indian retailers to Indians are exempt from the state excise and sales taxes, and that the State therefore must provide for the refund of any such taxes that have been precollected by respondent Herzog. See Pet. 3. The Court of Appeals likewise took that proposition as a given. See Pet. App. A5, A8, A10.[7] This case therefore does not furnish the Court

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Hayden-Cartwright Act does apply to Indian reservations).

In other circumstances, however, under the balancing test of preemption followed in *Cabazon* (slip op. 11-15); *Ramah Navajo School Bd.* v. *Bureau of Revenue*, 458 U.S. 832, 837-840 (1982); and *White Mountain Apache Tribe*, 448 U.S. at 145, the application of state sales or similar taxes may be preempted, such as where the activity the State seeks to tax involves the generation of value on the reservation and implicates significant Indian interests. See *Indian Country, U.S.A., Inc.* v. *Oklahoma ex rel. Oklahoma Tax Comm'n*, 829 F.2d 967, 983-987 (10th Cir. 1987), petition for cert. pending, No. 87-1068. Different considerations may also be present in the case of an Indian establishment on a reservation that engages in an ordinary retail business and does not merely cater to off-reservation non-Indians by marketing an exemption from substantial state excise taxes. See also *White Mountain Apache Tribe*, 448 U.S. at 151-152 n.16 (holding that the Buck Act, 4 U.S.C. 105 *et seq.*, which authorizes the imposition of state sales or use taxes "within a Federal area" (4 U.S.C. 105(a)), is inapplicable to Indian reservations); *Warren Trading Post*, 380 U.S. at 691 n.18.

[7] As regards state sales and similar taxes generally, this proposition of course follows from *Moe*, 425 U.S. at 480, and *Colville*, 447 U.S. at 142 n.8. The only question in the present setting would be whether the Hayden-Cartwright Act creates an exception to that general rule in the case of on-reservation sales of gasoline or other motor fuels to Indians (if that Act applies to Indian reservations at all, see note 6, *supra*). See *Menominee Indian Mills*, 57 Interior Dec. at 140 (concluding that the Act permitted taxation of gasoline sales made to Indians by the commissary of a sawmill operated by the federal government for the benefit of Indians); but cf. *Warren Trading Post*, 380 U.S. at 691 n.18 (the Buck Act does not permit application of state sales taxes to on-reservation sales to Indians).

with an occasion to consider whether the excise and sales taxes themselves may validly be imposed on retail sales of motor fuel by on-reservation Indian retailers (or other persons subject to the Indian trader laws), either to Indian customers or to non-Indian customers.

2. The only question presented, then, is the narrow one of whether the federal Indian trader statutes preempt a state law that requires a non-Indian wholesale distributor to *pre*pay the state excise and sales taxes on motor fuel delivered to Indian retail establishments on an Indian reservation. That question must be analyzed differently with respect to the portion of the fuel that ultimately will be sold to non-Indian customers and the portion that will be sold to Indian customers.

a. In our view, the New York Court of Appeals gave too broad a preemptive effect to the Indian trader statutes in holding that New York cannot require respondent Herzog to prepay the excise and sales taxes on the portion of the fuel that ultimately will be sold to non-Indians. As just explained, it must be assumed for present purposes that those taxes may lawfully be applied to the on-reservation sale of motor fuel by Indian retailers to non-Indian customers. It follows that, under *Moe* (425 U.S. at 481-483) and *Colville* (447 U.S. at 159), the State may impose the "minimal burden" on Indian retailers of aiding in the collection and enforcement of the taxes by requiring them to collect the taxes from their non-Indian customers. We believe that, at least in the absence of special circumstances, the principles of Indian law applied in *Moe* and *Colville* likewise permit a State to require, as an aspect of aiding the State in the collection and enforcement of taxes, that the Indian retailers prepay the taxes in accordance with generally applicable procedures under state law.

Indeed, in *Colville* itself, the Court explicitly held that "the State may validly require the tribal smokeshops to

affix tax stamps purchased from the State to individual packages of cigarettes prior to the time of sale to non-members of the Tribe" (447 U.S. at 159). The Court thus made clear that the Indian retailers could be required to prepay the cigarette tax directly *to* the State by requiring them to purchase tax stamps *from* the State prior to the sale of the cigarettes. There is no reason why the result should be any different where, as here, state law requires the retailer to prepay the tax not to the State, but to the wholesaler, which has already prepaid the tax to the State.

In *Moe*, state law in fact required the retailer to prepay the cigarette tax to the wholesaler at the time of purchase. 392 F. Supp. 1297, 1308 (D. Mont. 1975). In its opinion affirming the district court's decision in *Moe*, this Court recited the district court's holding that the State "may require a precollection of the tax imposed by law upon the non-Indian purchaser of the cigarettes" (425 U.S. at 468). The Court expressed no disapproval of this holding; it simply stated in a footnote (*id.* at 468 n.6):

> The District Court noted that the State's present statutory scheme contemplates advance payment or "precollection" of the sales tax by the retailer when he purchases his inventory from the wholesaler. Recognizing that its holding—a distinction between sales to Indians and to non-Indians—would result in "complicated problems" of enforcement by the State, the District Court deferred passing on those problems pending a decision by this Court. We, of course, express no opinion on this question.

This footnote appears to assume that the State may impose a precollection requirement on an Indian retailer with respect to on-reservation sales to non-Indians. The footnote merely acknowledges that because sales to Indians are tax-exempt and are presumptively not subject to a precollection require-

ment, "complicated problems" could arise in the administration of a precollection requirement that applies to only a portion of a wholesale delivery. Thus, *Moe*, like *Colville,* supports the proposition that general principles of preemption in this area do not, without more, bar a State from requiring an Indian retailer to prepay a valid state tax where prepayment is uniformly required of other retailers in the State. Accordingly, it is our view that the addition of the amount of the New York excise and sales taxes to the wholesale price otherwise paid by the Indian retailers to respondent Herzog for the portion of the motor fuel to be sold to non-Indians is a "minimal burden" on the retailers that can be justified under *Moe* and *Colville* as a means of preventing avoidance of the tax by the retailers or their customers. Compare *Moe,* 425 U.S. at 483.[8]

Contrary to the view of the New York Court of Appeals, we do not believe that the Indian trader statutes divest a State of whatever authority it otherwise would have under the general principles of Indian law applied in *Moe* and *Colville* to require prepayment of a valid state tax. We do not disagree with the conclusion by the Court of Appeals that wholesale sales by a non-Indian distributor to an Indian retailer on an Indian reservation are within the broad sweep of the Indian trader statutes, which apply to "[a]ny person desiring to trade with the Indians on any Indian reservation" (25 U.S.C. 262) and make it a criminal offense for

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[8] That conclusion would be especially warranted if the Hayden-Cartwright Act applies to sales of motor fuel to non-Indians on an Indian reservation, an issue on which we take no position at the present time. The Hayden-Cartwright Act permits a state tax on gasoline or other motor vehicle fuels to be levied "in the same manner" as such taxes are levied elsewhere in the State (4 U.S.C. 104(a)). The Court of Appeals might consider the application of the Hayden-Cartwright Act in proceedings on remand if it concludes that the authority of the State to require prepayment is otherwise doubtful even in light of *Moe* and *Colville.*

"[a]ny person * * * to introduce goods, or to trade * * * on any Indian reservation" without a license (25 U.S.C. 264). Compare *Central Machinery Co.* v. *Arizona State Tax Comm'n,* 448 U.S. 160, 164-165 (1980). But the core concern of the Indian trader statutes is to protect Indian customers on the reservation from exploitation; Congress has provided for comprehensive regulation of the retail trade with Indians to prevent such exploitation, and state taxes or other regulations that burden that retail trade are preempted under *Warren Trading Post* and *Central Machinery.* The Indian trader statutes do not similarly oust all state regulation of retail trade with *non*-Indians on an Indian reservation, and under *Moe* and *Colville,* even an Indian trader who is himself an Indian may be required to collect state taxes in connection with his retail trade with non-Indians. It follows that the Indian trader statutes do not preempt all state laws that touch upon the wholesale sale to a retailer who is subject to the Indian trader statutes of goods that are to be sold to non-Indian consumers—at least where the retailer is a non-Indian. We do not believe that a different result necessarily is required merely because the trader who makes retail sales to non-Indians happens to be an Indian, since his retail sales to non-Indians are not in themselves exempt from all state regulation. See *Colville,* 447 U.S. at 155-156.

In this case, the burden imposed by the State on the wholesale trade between respondent Herzog (the Indian trader) and its Indian wholesale customers on the reservation—namely, the requirement that Herzog add the amount of the state taxes to the wholesale price it otherwise charges the Indian retailers for motor fuel—is ancillary to the burden that the State may, under *Moe* and *Colville,* impose directly on the Indian retailers (despite their status as Indian traders) of prepaying the taxes to the State and collecting the taxes from their non-Indian customers. The

payment of the tax first by Herzog and then by the Indian retailers as part of their purchase from Herzog is merely the *means* by which the State imposes that prepayment requirement on Indian retailers. Especially in modern times, when a substantial number of non-Indians reside or travel on Indian reservations, we do not believe that the Indian trader statutes must be read inflexibly to bar a State from imposing this minimal and ancillary burden on the wholesale trade between a non-Indian distributor and an Indian retailer who sells to non-Indians on an Indian reservation. The distributor and the ultimate consumer are non-Indians who otherwise are subject to state regulation. Under the Indian trader statutes, the mere presence of an Indian retailer in the chain of distribution from one non-Indian to another does not constitute an insuperable barrier to a reasonable (and nondiscriminatory) state statutory scheme that provides for the passing through of liability for taxes that the State may lawfully impose on the non-Indian consumer.

There is no need for the Court to resolve this issue at the present time, however, because, for reasons we shall explain, we believe that the case should be remanded to the Court of Appeals for further consideration. If, after remand, the Court of Appeals should persist in its view that the prepayment requirement is preempted by the Indian trader statutes even as applied to motor fuel that will ultimately be sold by an Indian retailer to non-Indians, there will be time enough for this Court to review such a ruling.

b. By contrast, we doubt that the Indian trader statutes permit a State to require a distributor that delivers products to an Indian trader (or to require the Indian trader itself) to prepay sales taxes or similar taxes on products that will ultimately be sold to Indian retail customers on the reservation—if, as we must assume is true here (see pages

9-10, *supra*), the Indian trader statutes bar the imposition of the taxes on the retail sales. The Indian trader statutes and the regulations under them "would seem in themselves sufficient to show that Congress has taken the business of Indian trading on reservations so fully in hand that no room remains for state laws imposing additional burdens upon traders" (*Warren Trading Post*, 380 U.S. at 690 (footnote omitted); accord, *Central Machinery*, 448 U.S. at 165-166). A requirement that an Indian trader routinely prepay an invalid tax and then recover his prepayment only by seeking a refund under state law would seem to be such an impermissible additional burden under the comprehensive regulatory scheme imposed by the Indian trader statutes—at least where it is reasonably practicable for the State to fashion an exemption from its prepayment requirement for that portion of a wholesale sale of goods that will ultimately be sold to Indian consumers.

There is no need for the Court to resolve that question in this case, however, because since the petition for a writ of certiorari was filed, petitioners have proposed a scheme to exempt from the prepayment requirement the portion of wholesale deliveries to Indian or non-Indian retailers on Indian reservations in New York that will be sold to Indian customers. On March 8, 1988, the Commissioner of Taxation and Finance of the State of New York formally published for comment proposed regulations that would provide for such an exemption from the precollection of the motor fuel excise tax, based on several alternative methods of estimating the volume of sales by the retailers to tribal members. App., *infra*, 1a-14a. We take no position here on whether the proposed regulations fully accommodate the interests of the on-reservation Indian retail traders and their Indian customers in all particulars, but in our view the general approach of the regulations is sound. Although the proposed regulations address only the motor fuel tax, we have been informed by petitioners that they are committed

to the adoption of a comparable approach to the precollection requirement under the sales tax statute as well, and that proposed regulations under the sales tax statute have been placed on the agenda for the next meeting of the Tax Commissioner on June 22, 1988.

In addition, we have been informed by counsel for petitioners and by counsel for the Seneca Nation that they have begun negotiations to address a number of issues that have arisen concerning the application of state law (including the taxes at issue here) to reservation activities, as well as other issues arising in the relations between the Nation and the State generally. Petitioners have informed us that they regard the proposed regulations issued on March 8, 1988, as one step in this dialogue and that the eventual content of the final regulations—or other possible solutions to the questions presented by application of the State's excise and sales taxes to on-reservation sales, such as agreements between the State and the Indian tribes to share tax revenues and cooperate in the collection of their respective taxes—may be the subject of negotiations between the State and the Seneca Nation, as well as any other Indian tribes in New York that might choose to participate.[9]

In these circumstances, we suggest that the Court grant the petition for a writ of certiorari, vacate the judgment of the Court of Appeals, and remand the case to the Court of Appeals for further consideration in light of the new position advanced by petitioners in the proposed regulations, the views we have expressed herein,[10] and any additional

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[9] Petitioners have further informed us that although the period for submitting comments on the proposed regulations formally expired 45 days after their publication on March 8, 1988, the Department of Taxation and Finance has informed prospective commenters, including the Seneca Nation, that it will receive comments on the proposed regulations at least through the middle of June.

[10] A remand to the Court of Appeals also would allow that court

considerations that may arise as a result of comments on the proposed regulations and negotiations between the State and the Seneca Nation and other New York tribes. Despite the fact that the Court of Appeals rendered its decision on an appeal of a preliminary injunction that could in theory be vacated by the state courts at a later date in light of the proposed regulations or other developments, we suggest that the Court vacate the judgment below and remand for further proceedings rather than deny the petition. The decision of the Court of Appeals appears to interpose the Indian trader statutes as an absolute bar to the imposition of any prepayment requirement by the State in connection with any wholesale deliveries to Indian retailers on Indian reservations, even with respect to motor fuel that will ultimately be sold by those retailers to non-Indians. If that seemingly definitive ruling by the highest court of the State is allowed to stand, it could prove to be an impediment to negotiations and to an appropriate resolution of the controversy concerning the application of the State's excise and sales taxes to on-reservation sales of motor fuel, because the decision presumably would prevent petitioners from resolving that controversy by means of the issuance in final form of the regulations they have proposed to exempt from the prepayment requirement only the motor fuel that will ultimately be sold to Indian customers.[11]

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to consider the extent, if any, to which the Hayden-Cartwright Act applies to sales of motor fuel to Indians or non-Indians on Indian reservations. The Court of Appeals did not address the possible application of that Act in the decision under review.

[11] We agree with petitioners (Pet. 6) that the decision of the Court of Appeals, while rendered in connection with respondents' application for a preliminary injunction, is sufficiently "final" to permit review by this Court under 28 U.S.C. 1257. The Court of Appeals held that the prepayment requirement is preempted by the Indian trader statutes as a matter of law, no matter how minimal the burden it imposes (Pet. App. A14), and that ruling presumably would be binding in any fur-

CONCLUSION

The petition for a writ of certiorari should be granted, the judgment of the Court of Appeals should be vacated, and the case should be remanded to the Court of Appeals for further consideration in light of the views expressed herein and the new position advanced by petitioners in the proposed regulations published on March 8, 1988.

Respectfully submitted.

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JUNE 1988

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ther proceedings in state court. See *Cox Broadcasting Corp.* v. *Cohn*, 420 U.S. 469, 478-479 (1975).

STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE
COMMISSIONER OF TAXATION AND FINANCE
ALBANY, NEW YORK

Pursuant to the authority contained in subdivision First of section 171 and sections 284.1, 284.3, 285, 289-c and 289-f of the Tax Law, the Commissioner of Taxation and Finance, at an open meeting held on even date with the signing of this rule, hereby proposes to make and adopt the following amendments to its regulations with respect to the Motor Fuel Tax, by amending the heading of Part 414, and section 414.1, by repealing section 414.4 and renumbering sections 414.5 and 414.6 to be sections 414.4 and 414.5, and by adding new sections 414.6 and 414.7 to Part 414 of Article 1 of such regulations, as published in Subchapter F of Chapter III of Title 20 of the Official Compilation of Codes, Rules and Regulations of the State of New York, to read as follows:

Section 1. The heading of Part 414 of such regulations is hereby amended to read as follows:

PART 414
EXEMPTIONS FROM TAX

(Statutory authority: Tax Law, § 171; art. 12-A)

Sec.
414.1 General
414.2 Governmental entities
414.3 Qualified hospitals
[414.4 Indian nations, tribes and individuals]
[414.5] 414.4 Diplomatic missions and diplomatic personnel

[414.6] 414.5 The United Nations

414.6 Indian nations or tribes, qualified Indian consumers and registered dealers

414.7 Qualified sales of motor fuel on qualified reservations

Section 2. Subdivision (a) of section 414.1 of Part 414 of such regulations is hereby amended by deleting paragraph (4) of such subdivision (which was reserved for Indian nations, tribes and individuals), by renumbering paragraph (5) of such subdivision to be paragraph (4), and by adding a new paragraph (5) to such subdivision, to read as follows:

(5) As provided for in sections 414.6 and 414.7 of this Part, exempt Indian nations or tribes, qualified Indian consumers and registered dealers may purchase on qualified reservations – with the prior approval of the Department of Taxation and Finance, or, if applicable, of the Indian nation or tribe – motor fuel upon which the seller has not passed through the motor fuel tax imposed pursuant to article 12-A of the Tax Law.

Section 3. Section 414.4 of such Part is hereby repealed; and sections 414.5 and 414.6 of such Part are renumbered to be sections 414.4 and 414.5.

Section 4. New sections 414.6 and 414.7 are hereby added to such Part, to read as follows:

414.6 Indian nations or tribes, qualified Indian consumers and registered dealers. (Tax Law, §§ 284(1) and 289-c) (a) General. As provided for in this section and in section 414.7 of this Part, exempt Indian nations or tribes, qualified Indian consumers and registered dealers may purchase, on qualified reservations, motor fuel upon which the seller has not passed through the motor fuel tax imposed pursuant to article 12-A of the Tax Law.

(b) Definitions. (1) (i) "Qualified Indian" for purposes of this Article means a person, duly enrolled on the tribal rolls of one of the exempt Indian nations or tribes.

(ii) "Qualified Indian consumer" for purposes of this Article means a qualified Indian who purchases or intends to purchase motor fuel within the boundaries of a qualified reservation for his own use and consumption (i.e. other than for resale).

(2) "Exempt Indian nation or tribe" for purposes of this Article means one of the following New York State Indian nations or tribes: Cayuga, Oneida Indian Nation, Onondaga Nation of Indians, Poospatuck, St. Regis Mohawk, Seneca Nation of Indians, Shinnecock, Tonawanda Band of Senecas and Tuscarora Nation of Indians.

(3) "Qualified reservation" for purposes of this Article means the following reservations of the exempt Indian nations or tribes: Allegany Indian reservation, Cattaraugus Indian reservation, Oil Spring Indian reservation, Oneida Indian territory, Onondaga Indian reservation, Poospatuck Indian reservation, St. Regis Indian reservation, Shinnecock Indian reservation, Tonawanda Indian reservation and Tuscarora Indian reservation.

(4) "Registered dealer" for purposes of this Article means: (i) the (Indian or non-Indian) owner, lessee, or operator of a retail filling station located within the boundaries of a qualified reservation (including, but not limited to, any such person who or which has either a valid Indian Trader's License issued by the United States Department of the Interior, Bureau of Indian Affairs, or a valid license issued by an exempt Indian nation or tribe), who or which (a) registers with the Department of Taxation and Finance, and (b) makes or intends to make qualified sales of motor fuel; and,

(ii) a qualified Indian who is a subjobber, broker, or wholesale dealer (including, but not limited to, any such person who has either a valid Indian Trader's License issued by the United States Department of the Interior, Bureau of Indian Affairs, or a valid license issued by an

exempt Indian nation or tribe), who (a) registers with the Department of Taxation and Finance, and (b) makes or intends to make qualified sales of motor fuel on a qualified reservation.

(5) "Qualified sale" for purposes of this Article means a sale of motor fuel by a registered distributor, an exempt Indian nation or tribe, or a registered dealer, made without passing through the motor fuel tax to an exempt Indian nation or tribe, a registered dealer, or a qualified Indian consumer.

(c) Exempt Indian nations or tribes. (1) In order to confirm its exempt status to sellers of motor fuel, an Indian nation or tribe, in accordance with subdivision (b) of section 529.9 of this Title, must submit to the Department of Taxation and Finance, in letter form, a request for exempt organization status, signed by the governing chief or ruling body of the Indian nation or tribe. Upon receipt of the request, the Department will issue the requesting nation or tribe a numbered exempt organization certificate. As an exempt organization, an Indian nation or tribe is subject to all of the provisions of section 529.9 of this Title.

(2) An exempt Indian nation or tribe may purchase motor fuel upon which the seller has not passed through the motor fuel tax for its own use and consumption, or for making qualified sales, provided that the nation or tribe: (i) holds a valid exempt organization certificate issued by the New York State Department of Taxation and Finance; (ii) takes delivery of the motor fuel on its qualified reservation; and, (iii) uses, or intends to use, such fuel either for its own official use and consumption, or to make qualified sales.

(3) The exempt Indian nation or tribe may purchase motor fuel upon which the seller has not passed through the motor fuel tax, by issuing to the seller of the fuel a properly completed certificate of motor fuel tax exemption

for qualified Indian tribes or nations. Such exemption certificate must disclose the Indian nation's or tribe's exempt organization number referred to in paragraph (1) of this subdivision.

(4) Failure to comply with any of the provisions of articles 12-A and 28 of the Tax Law with respect to motor fuel, or any rule or regulation pursuant to such articles, may result in the cancellation or suspension of the authority of such nation or tribe to purchase motor fuel upon which the seller has not passed through the motor fuel tax for purposes of making qualified sales.

(d) Qualified Indian consumers. (1) For purposes of determining residency for this exemption, the Allegany, Cattaraugus and Oil Spring reservations of the Seneca Nation are considered to be one reservation. Thus, a purchase of motor fuel made by a qualified Indian consumer residing on any one of these three qualified reservations and delivered to that consumer on any of the three qualified reservations of the Seneca Nation is tax exempt.

(2) A qualified Indian consumer may purchase motor fuel upon which the seller has not passed through the motor fuel tax, if such individual: (i) purchases the motor fuel for his own use and consumption; and, (ii) takes delivery of the motor fuel on a qualified reservation.

(3) A qualified Indian consumer may purchase motor fuel upon which the seller has not passed through the motor fuel tax, by issuing to the seller of the fuel a properly completed certificate of individual Indian exemption for certain taxes on property delivered on a reservation.

(e) Registered dealers. (1) Registration of dealers. Upon application, the Department of Taxation and Finance may register an applicant and issue a certificate of registration as a dealer of motor fuel to him, if the applicant:

(i)(a) is the (Indian or non-Indian) owner, lessee or operator of a retail filling station which is located within

the boundaries of a qualified reservation who makes, or intends to make, qualified sales of motor fuel, or (b) is a qualified Indian who is also a subjobber, broker, or wholesale dealer who makes, or intends to make, qualified sales within the boundaries of a qualified reservation;

(ii)(a) has no outstanding liability for any taxes or other amounts imposed pursuant to the Tax Law which has finally been determined to be due from such applicant, and (b) is properly licensed or registered for any applicable taxes (e.g., that the applicant has a valid certificate of authority for the sales tax pursuant to Tax Law section 1132(c)); and

(iii)(a) provides evidence to the Department that he has complied (or will comply) with any applicable tribal regulations and/or licensing procedures, and (b) has no outstanding liability for any applicable taxes or other sums which may be imposed by an Indian nation or tribe, and which has finally been determined to be due from such applicant.

(2) Unless so registered, or otherwise specifically provided for in this Part, no person shall sell motor fuel within a qualified reservation without payment and/or pass through of the motor fuel tax.

(3) A registered dealer may purchase motor fuel upon which the seller has not passed through the motor fuel tax for purposes of making qualified sales, provided that the registered dealer: (i) has received from the Department a valid certificate of registration; (ii) takes delivery of such fuel within the boundaries of his qualified reservation; and, (iii) uses or intends to use such fuel to make qualified sales.

(4) A registered dealer may purchase motor fuel upon which the seller has not passed through the motor fuel tax by issuing to the seller of such fuel a properly completed

certificate of motor fuel tax exemption. Such exemption certificate must indicate such dealer's registration number.

(5) Failure to comply with any of the provisions of articles 12-A and 28 of the Tax Law with respect to motor fuel, or any rule or regulation pursuant to such articles, may result in the cancellation or suspension of a registration as a dealer of motor fuel. See, section 411.7 of this Title for notifications of cancellation, suspension or refusal to register.

(f) Exemption certificates and other records. (1) The exemption certificates prescribed in subdivisions (c), (d) and (e) of this section should be completed by the purchaser and given to the seller of motor fuel upon which the tax has not been passed through, at the time of an initial purchase. A separate exemption certificate need not be given for each additional purchase of motor fuel, provided that each delivery of such fuel is substantiated as being exempt from tax with an individual bill, invoice, receipt or other form of written evidence given by the seller showing the exempt Indian nation or tribe, qualified Indian consumer, or registered dealer as the purchaser.

(2) Every bill, invoice, receipt or other form of written evidence given by the seller must indicate the quantity of motor fuel delivered, the purchase price of the fuel without regard to any exemption and the price paid or to be paid by the exempt purchaser for such fuel. In addition, such evidence of each exempt transaction must be retained by the seller; and must be signed and dated by the individual taking delivery of the motor fuel. In the case of a purchase by an exempt Indian nation or tribe, such evidence must indicate such nation's or tribe's exempt organization number. In the case of a purchase by a registered dealer, such evidence must indicate such dealer's registration number.

(3) Sellers of motor fuel upon which the tax has not been passed through must establish a system of associating these individual bills, invoices, receipts and other forms of written evidence with the applicable tax exemption certificates initially received from the purchasers.

(g) Billing and payment. All purchasers of motor fuel upon which the seller has not passed through the motor fuel tax by an exempt Indian nation or tribe, by a qualified Indian consumer, or by a registered dealer must be billed directly to such nation or tribe, consumer or dealer. Furthermore, such purchases must be paid for from the funds of such nation or tribe, consumer or dealer. Alternatively, if such nation or tribe, qualified consumer, or registered dealer substantiates its exempt status to an oil company and such oil company consents to issue a credit card to such person or entity for purposes of purchasing motor fuel, individual purchases will be charged to such credit card account as if no exemption exists. Purchases of motor fuel so charged to such an authorized credit card will then be billed to the person or entity exclusive of the taxes from which the person or entity is exempt.

414.7 Qualified sales of motor fuel on qualified reservations. (Tax Law, §§ 284(1) and 289-c) (a) General applications. (1) The motor fuel tax imposed pursuant to article 12-A of the Tax Law is not required to be paid and passed through when motor fuel is imported or caused to be imported into New York State, or produced, refined, manufactured, or compounded in the State, by a distributor for sale under any circumstances which preclude the collection of the tax by reason of the United States Constitution and any laws of the United States enacted pursuant thereto.

(2) Federal constitutional and statutory principles relating to Indian sovereignty, preempt the application of a state motor fuel excise tax to a sale of motor fuel on a qualified reservation, if such fuel is ultimately purchased on such

reservation by a qualified Indian for his own personal use and consumption. Consistent with such federal principles, sales of motor fuel on a qualified reservation to a non-Indian and non-qualified Indian are subject to the tax if the ultimate incidence of, and liability for, the tax is upon the non-Indian or non-qualified consumer. Additionally, consistent with such principles, all sales of motor fuel made within a state and outside the boundaries of a qualified reservation – regardless of whether the seller and/or the purchaser is an exempt Indian nation or tribe, a registered dealer, or a qualified Indian – are subject to the state motor fuel excise tax.

(b) Sales by registered distributors. (1) A distributor may import motor fuel or cause motor fuel to be imported into New York State without payment and pass through of the motor fuel tax, if the distributor – with the prior approval of the Department of Taxation and Finance, or, if applicable, of an exempt Indian nation or tribe – sells and delivers that fuel to: (i) an exempt Indian nation or tribe; (ii) a qualified Indian consumer; or, (iii) a registered dealer. Similarly, a distributor may produce, refine, manufacture or compound motor fuel in the State without payment and pass through of the tax, if the distributor – with the prior approval of the Department, or, if applicable, of an exempt Indian nation or tribe – sells and delivers that fuel to: (i) an exempt Indian nation or tribe; (ii) a qualified Indian consumer; or, (iii) a registered dealer.

(2) In the event that a distributor has paid or has had the motor fuel tax passed through to him and subsequently makes – with the prior approval of the Department, or, if applicable, of an exempt Indian nation or tribe – such a qualified sale, a credit or refund will be allowed that distributor in the amount of such tax.

(3) No person other than a duly registered motor fuel distributor may bring motor fuel onto a qualified reserva-

tion and sell such fuel without passing through the motor fuel tax. However, as provided in section 414.6 of this Part, subsequent qualified sales of motor fuel may be made solely on such qualified reservation. Properly completed exemption certificates must be received by all sellers of motor fuel, where the motor fuel tax has not been passed through to the purchaser.

(4) In order to administer the motor fuel tax with respect to the sale of motor fuel on qualified reservations consistently with federal constitutional and statutory principles, a registered distributor may sell and deliver motor fuel without payment and/or pass through of the motor fuel tax to an exempt Indian nation or tribe, a qualified Indian consumer, or a registered dealer; provided that such registered distributor complies with the applicable provisions of subdivisions (c) and (d) of this section with respect to approval of the amount of such fuel to be sold and delivered, and further complies with all of the requirements of this Subchapter.

(c) Approval for delivery required. (1) If an exempt Indian nation or tribe agrees with the Department to regulate, license, or control the sale and distribution within its qualified reservation of agreed upon motor fuel gallonage upon which the seller has permissibly not passed through the motor fuel tax, then a registered distributor must obtain the approval of that nation or tribe regarding the agreed upon motor fuel gallonage to be sold and delivered without passing through such tax, prior to each such sale and delivery of any such fuel on such reservation.

(2) In the absence of such an agreement regarding the sale and distribution of motor fuel gallonage upon which the motor fuel tax has not been passed through, the registered distributor must obtain the approval of the Department regarding the motor fuel gallonage to be sold and delivered

without passing through such tax, prior to each such sale and delivery of any such fuel on such reservation.

(d) Basis for approval by Department. If applicable, Departmental approval for delivery will be based upon evidence of valid purchase orders received by the registered distributor of quantities of motor fuel reasonably related to the probable demand of qualified Indian consumers in the trade territory of the exempt Indian nation or tribe (if such nation or tribe chooses to make qualified sales), or registered dealer.

(1) In determining such probable demand, the Department will:

(i) in the event that an exempt Indian nation or tribe regulates, licenses or controls the sale and distribution of motor fuel within its reservation, consult with such nation or tribe regarding any evidence it may submit relating to such probable demand (e.g. records of previous sales to qualified Indian consumers, records relating to the average consumption of qualified Indian consumers on and near its reservation, tribal enrollment and vehicle registrations, or other statistical evidence, etc.); or,

(ii) in the absence of such regulation or such evidence, calculate such demand based upon the New York average motor fuel consumption per capita, as compiled by the New York State Department of Energy for the most recently completed calendar or fiscal year, multiplied by the number of enrolled members of the affected nation or tribe (or, if such membership numbers are unavailable, by the reservation service area population, as compiled by the Bureau of Indian Affairs).

(2) In determining such trade territory, the Department will:

(i) in the event that an exempt Indian nation or tribe regulates, licenses or controls the sale and distribution of motor fuel within its reservation, consult with such nation

or tribe regarding any evidence it may submit relating to such regulated and/or licensed sellers located on its reservation; or

(ii) in the absence of such regulation or such evidence, calculate such trade territory based upon all of the information at its disposal.

(3) In addition, the Department will also take into consideration any evidence submitted by a registered dealer relating to such probable demand and to that dealer's trade territory (e.g. a verified record of previous sales to qualified Indian consumers, evidence of the number of qualified Indian consumers located within a reasonable distance of the dealer's place of business, records indicating the percentage of such trade historically realized by the dealer, or other statistical evidence in support of the proposed transaction).

(4) In the absence of any such evidence by an exempt Indian nation or tribe, a qualified Indian consumer, or a registered dealer, the Department may restrict the total deliveries to any reservation of motor fuel, upon which the motor fuel tax has not been passed through, to an amount calculated pursuant to paragraphs (1)(ii) and 2(ii) of this subdivision.

(5) Approval for sale or delivery to an exempt nation or tribe or to a registered dealer will be denied where the Department finds that such nation or tribe, or dealer are or have been making sales in violation of this Subchapter.

(e) Credits and refunds to distributors. (1) A registered distributor selling motor fuel on a qualified reservation to an exempt Indian nation or tribe, a qualified Indian consumer, or a registered dealer, under the circumstances described in this section and section 414.6 of this Part, who has not passed through the motor fuel tax to such nation or tribe, such consumer, or such dealer, will be allowed a credit or refund in the amount of the motor fuel tax paid or assumed by, or passed through to such distributor and

not passed through to the exempt purchaser. Records sufficient to substantiate all exemptions and any credit or refund claimed on the basis of such exemptions must be maintained by the seller. See, also, Part 415 of this Title relating to refunds, credits and reimbursements.

(2) A registered distributor must report motor fuel sold to an exempt Indian nation or tribe, a qualified Indian consumer or a registered dealer in its monthly return of tax on motor fuels and may deduct the quantity so sold in arriving at the net taxable gallonage to the extent such fuel was sold without passing through to such purchasers the motor fuel tax.

(f) Limitations on sales. Exempt Indian nations or tribes, qualified Indian consumers, and registered dealers may purchase motor fuel upon which the seller has not passed through the motor fuel tax, only to the extent provided in this section and in section 414.6 of this Part. Such Indian nations or tribes, consumers, and dealers, who or which purchase motor fuel under any other circumstances must pay the motor fuel tax at the time of purchase by way of remitting the tax to the seller as part of the purchase price of the motor fuel.

Section 6. This regulation shall take effect immediately; provided, however, that the Department of Taxation of [*sic*] Finance will, during the first forty-five days after this rule is filed, register applicants who or which wish to make qualified sales of motor fuel on qualified reservations; provided, further, that the amendments of this rule which limit the sale of motor fuel, upon which the tax has not been passed through by registered distributors shall take effect on the forty-fifth day after the last day of the month this regulation is filed;

Dated: Albany, New York
March 8, 1988

/s/ RODERICK G. W. CHU
Roderick G. W. Chu
Commissioner of Taxation
and Finance

It is hereby certified that the foregoing is a true copy of a proposed amendment to the Motor Fuel Tax Regulations duly proposed by the Commissioner of Taxation and Finance pursuant to the authority contained in subdivision First of section 171, and subdivisions (1) and (3) of section 284, section 285, subdivision 3 of section 289-c and section 289-f of the Tax Law, at an open meeting held in Albany, New York on March 8, 1988.

Dated: Albany, New York
March 8, 1988

/s/ KAREN MCCARTHY-TOWNSEND
Karen McCarthy-Townsend
Secretary to the Commissioner
of Taxation and Finance

U.S. GOVERNMENT PRINTING OFFICE 1988—202 037/60493